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IN THE COURT OF APPEALS OF INDIANA

MICHELLE WHITE,	)	
	)	
Appellant,	)	
	)	
vs.	)	No. 49A02-0802-CV-180
	)	
INTERNATIONAL SCHOOL OF INDIANA,	)	
	)	
Appellee.	)	

APPEAL FROM THE MARION CIRCUIT COURT
The Honorable Theodore M. Sosin, Judge
Cause No. 49C01-0606-CC-0022622

October 3, 2008

MEMORANDUM DECISION – NOT FOR PUBLICATION

MATHIAS, Judge

The International School of Indiana ("the International School") filed a complaint in Marion Circuit Court against Michelle White ("White") to recover the full amount of tuition due for the 2004-2005 school year. The trial court rejected White's argument that the enrollment agreement executed between the parties was nonbinding, and entered judgment in favor of the International School. White appeals and argues that the trial court erred in its interpretation of the contract. We affirm.

Facts and Procedural History

In 2004, White sought to enroll her daughter in the International School for the 2004-2005 academic year. Accordingly, she signed an enrollment agreement, which provided in pertinent part:

> I agree that I am responsible for the full amount of my child's tuition, which is $9,160 for the 2004-2005 school year ($5660 for ½ day 3-year-old program). **This agreement must be accompanied by a $600 deposit in order to be binding. This deposit is non-refundable after April 15, 2004.** This deposit will be applied in full to my total tuition balance. . . . **No student will be permitted to begin attending classes until the enrollment deposit and the first installment payment have been paid in full.**

Appellant's App. p. 51 (emphasis in original). White elected to pay the tuition obligation in ten monthly installments, which were to begin on June 30, 2004.

White did not pay the $600 deposit, and did not make a tuition payment until October 27, 2004. Id. at 52. Yet, White's daughter began attending the school in August 2004. On some date in either February or March 2005, White withdrew her daughter from the International School. White paid $3530 toward the $5660 tuition.

The International School obtained a small claims judgment against White, who then filed a small claims appeal in Marion Circuit Court. The International School filed

its complaint with the court on June 27, 2006. In that complaint the school alleged that it had a contract with White to provide educational services and that White breached her duty of payment. After numerous continuances, a bench trial was held on January 22, 2008. At trial, White argued that the agreement was nonbinding without receipt of the deposit, and therefore, its terms could not be enforced. The trial court disagreed and entered judgment in favor of the International School in the amount of $2821.66 plus $1200 in attorney fees. White now appeals.

Standard of Review

The construction of the terms of a written contract is a pure question of law, and we review such questions de novo. Whitaker v. Brunner, 814 N.E.2d 288 (Ind. Ct. App. 2004), trans. denied. Our primary task when interpreting the meaning of a contract is to determine and effectuate the intent of the parties. Id. We must first determine whether the language of the contract is ambiguous. Id. "The unambiguous language of a contract is conclusive upon the parties to the contract and upon the courts." Id. at 294 (citation omitted).

Discussion and Decision

White argues that the enrollment agreement is a nonbinding contract because she did not pay the $600 deposit as required under the contract. Specifically, the contract provides, "[t]his agreement must be accompanied by a $600 deposit in order to be binding." Appellant's App. p. 51. In response, the International School asserts that the contract language constitutes a condition precedent, which the school waived, and therefore, the school may demand performance of the contract.

"[A] condition precedent is a condition that must be performed before the agreement of the parties becomes a binding contract or that must be fulfilled before the duty to perform a specific obligation arises." McGraw v. Marchioli, 812 N.E.2d 1154, 1157 (Ind. Ct. App. 2004). Generally, "an express condition must be fulfilled or no liability can arise on the promise that the condition qualifies." Id.

However, performance of a condition may be excused by waiver. Id. (citing Ind. State Highway Comm'n v. Curtis, 704 N.E.2d 1015, 1018 (Ind. 1998)); see also Harrison v. Thomas, 761 N.E.2d 816, 820 (Ind. 2002) ("It has long been the law in this state that '[t]he performance of a condition precedent may be waived in many ways.'") (citation omitted). "A condition in a contract may be waived by the conduct of a party." McGraw, 812 N.E.2d 1158. Importantly, "[o]nce a condition precedent has been waived and such waiver has been acted upon, the failure to perform the condition cannot be insisted upon as a forfeiture of the contract." Crum v. AVCA Financial Servs. of Indianapolis, Inc., 552 N.E.2d 823, 829 (Ind. Ct. App. 1990), trans. denied; see also Intern'l Heath & Racquet Club, Inc. v. Scott, 789 N.E.2d 62, 66 (Ind. Ct. App. 2003).

In this case, the $600 deposit, the condition precedent, was for the benefit of the International School because the deposit was an advance payment of tuition. The International School waived that condition as an accommodation to White's financial condition and allowed White to enroll her child. Thereafter, both parties proceeded under the remaining terms of the contract. The School's waiver of the condition benefited White. Consequently, the School's failure to require the deposit prior to enrollment did not result in a forfeiture of the contract. We therefore conclude that the trial court did not

err when it determined that, pursuant to the enrollment agreement, White was obligated to pay the full amount of tuition due for the 2004-2005 school year, attorney fees and costs.

Affirmed.

BAKER, C.J., and BROWN, J., concur.